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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/017,495

12/14/2001

Cuie Zhao

BOR-160

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03/26/2009

KOKKA & BACKUS, PC
200 PAGE MILL ROAD
SUITE 103
PALO ALTO, CA 94306

EXAMINER

TRUONG, LECHI

ART UNIT

PAPER NUMBER

2194

MAIL DATE

DELIVERY MODE

03/26/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: CUIE ZHAO,
VISHWANATH KESHAVAMURTH KASARAVALLI
AND VIJAYKUMAR NATARAJAN

Application No. 10/017,495
Technology Center 2194

Mailed: March 26, 2009

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 24, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

EXAMINER, STATUS OF CLAIMS

A review of the file indicates that the advisory Action filed December 13, 2005 box 7 the examiner stated that:

The status of the claims will be as follows:

Claims allowed: 3-8 and 11.

Claim(s) objected to: none.

Claims rejected: 1, 2, 9, 10 and 12-24.

Claim(s) withdrawn from consideration: none.

However, the Notice of Panel Decision from Pre-Appeal Brief filed on August 23, 2006 the panel has determined the status of the claims as follows:

Claim(s) allowed:

Claim(s) objected to:

Claims rejected: 1-24

Claims(s) withdrawn from consideration:

Correction of the status of all claims is required.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated June 7, 2006. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter*. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters.< While

reference to page and line number of the specification **>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 4 and 5 of the Appeal Brief filed June 7, 2006 is deficient because it does not separately map independent claims 1, 15 and 23 to the specification. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office’s requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) 1) to vacate the Examiner's Answer mailed January 31, 2008;
- 2) to generate a new Examiner's Answer setting forth the correct status of claims and to correct other sections of the Answer as may be required;
- 3) hold the Appeal Brief filed June 7, 2006 defective, as required by 37 CFR § 41.37(d);
- 4) notify the Appellants to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
- 5) acknowledge and consider any "paper" submitted by Appellant to correct the Appeal Brief
- 6) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/MTV/dal

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